



COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 456, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 7, between lines 32 and 33, begin a new paragraph and insert:
- 2 "SECTION 5. IC 22-4-13.3 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2015]:
- 5 **Chapter 13.3. Administrative Withholding for Benefit**
- 6 **Overpayments**
- 7 **Sec. 1. Whenever:**
- 8 (1) the department establishes an overpayment for an
- 9 individual under IC 22-4-13-1(c) or IC 22-4-13-1(d); and
- 10 (2) the overpayment becomes final following the exhaustion of
- 11 all appeals;
- 12 the department may, in addition to any other manner of collecting
- 13 the overpayment provided by law, require each employer of an
- 14 individual for whom an overpayment is established to withhold
- 15 amounts from the individual's income and pay those amounts to
- 16 the department in accordance with this chapter.
- 17 **Sec. 2. (a) The department shall provide a notice to an**
- 18 **individual who is subject to withholding under section 1 of this**
- 19 **chapter.**

(b) The notice provided under subsection (a) must contain the following:

- (1) That the individual's income will be withheld.
- (2) That a notice to withhold the individual's income applies to all current and subsequent employers.
- (3) That a notice to withhold income will be provided to each of the individual's employers and will include the information listed in section 3 of this chapter.
- (4) That the individual may contest the withholding and assert exemptions from withholding by requesting an administrative review.
- (5) The grounds and procedures for the individual to contest the withholding.

Sec. 3. (a) The department shall provide a notice to withhold income to each employer of an individual who is subject to withholding under section 1 of this chapter.

(b) A notice to withhold income provided under subsection (a) is binding on the employer and must contain the following:

- (1) The Social Security number of the individual who is subject to withholding.
- (2) The total amount to be withheld from the individual's income, including any interest, penalties, or assessments accrued under this article.
- (3) An explanation of an employer's duties under section 4 of this chapter upon the employer's receipt of the notice to withhold income.
- (4) A description of the limitations on income withholding established by section 7(d) of this chapter.
- (5) A description of:
 - (A) the prohibition established under section 5 of this chapter against an employer using income withholding as the basis for refusing to hire, discharging, or taking disciplinary action against an individual; and
 - (B) the penalties established under section 6 of this chapter for an employer that refuses to withhold income or knowingly misrepresents an employee's income.

Sec. 4. An employer that receives a notice to withhold income under section 3 of this chapter shall do the following:

- (1) Verify the individual's employment to the department.
- (2) Withhold from the income due to the individual each pay period an amount:
 - (A) determined in accordance with; and

(B) subject to the limitations of and priority established by; IC 24-4.5-5-105 in the same manner as a garnishment. An income withholding under this chapter is not an assignment of wages under IC 22-2-6.

(3) Begin withholding the amount determined under subdivision (2) from the individual's income beginning with the first pay period that occurs not later than fourteen (14) days after the date the employer receives the notice sent under section 3 of this chapter.

(4) Remit the amount withheld under subdivision (2) to the department by check or electronic payment (as defined by IC 5-27-2-3) not later than seven (7) days after the date of each regularly scheduled pay day.

(5) Continue withholding under this section until:

(A) the department notifies the employer to discontinue the withholding; or

(B) the full amount required to be paid to the department has been paid, as indicated by a written statement to the employer from the department.

(6) Notify the department, if the individual subject to withholding terminates employment, including the individual's last known address and the name of any new employer, if known.

Sec. 5. (a) An employer may not use the withholding of income to collect an overpayment to the department as a basis for:

- (1) refusing to hire a potential employee;
- (2) discharging an employee; or
- (3) taking disciplinary action against an employee.

(b) If:

- (1) an employee reasonably believes that an employer took an action described in subsection (a); and
- (2) the employee was adversely affected by the employer's action;

the employee may bring a suit against the employer in a court with jurisdiction.

(c) If a court determines that an employer took an action described in subsection (a), the employer may be:

- (1) ordered to hire or reinstate an employee who was adversely affected by the employer's action without loss of pay or benefits; and
- (2) fined an amount not to exceed one thousand dollars (\$1,000).

1 **Sec. 6. (a) An employer that refuses to withhold income as**
2 **required by this chapter or knowingly misrepresents the income of**
3 **an employee:**

4 **(1) is liable to the department for the amount that the**
5 **employer failed to withhold from an employee's income; and**

6 **(2) may be ordered to pay punitive damages to the**
7 **department in an amount not to exceed one thousand dollars**
8 **(\$1,000) for each pay period the employer failed to withhold**
9 **income as required or knowingly misrepresented the income**
10 **of the employee.**

11 **(b) The department may institute a civil action in a court with**
12 **jurisdiction requesting that the court direct the employer to appear**
13 **and to show cause why the penalties described in this section**
14 **should not be assessed.**

15 **(c) At the hearing on the order to show cause, the court, upon a**
16 **finding that the employer refused to withhold income as required**
17 **or knowingly misrepresented an employee's income:**

18 **(1) shall require the employer to pay the amount the employer**
19 **failed or refused to withhold from the employee's income;**

20 **(2) may order the employer to provide accurate information**
21 **concerning an employee's income;**

22 **(3) may assess against the employer punitive damages under**
23 **subsection (a)(2); and**

24 **(4) may order the employer to otherwise comply with this**
25 **chapter.**

26 **Sec. 7. (a) An employer that complies with a notice described in**
27 **section 3 of this chapter that is regular on its face is not liable in**
28 **any civil action for any conduct taken in compliance with the**
29 **notice.**

30 **(b) An employer that complies with a notice described in section**
31 **3 of this chapter is discharged from liability to an employee for the**
32 **part of the employee's income that was withheld in compliance**
33 **with the notice.**

34 **(c) If a court issues an order to stay a withholding of income, the**
35 **department is not liable in any civil action to an individual who is**
36 **the subject of the income withholding for amounts withheld from**
37 **the individual's income before the stay becomes effective.**

38 **(d) Administrative income withholdings issued under this**
39 **chapter are subject to the limitations set forth in IC 24-4.5-5-105.**
40 **A withholding under this chapter is not an assignment of wages**
41 **under IC 22-2-6.**

42 **(e) The department may adopt rules under IC 4-22-2, including**

1 emergency rules in the manner provided under IC 4-22-2-37.1, to
 2 carry out the department's responsibilities under this chapter.

3 **Sec. 8. (a) An individual who receives a notice under section 2 of**
 4 **this chapter may contest the withholding and assert exemptions by**
 5 **requesting, in writing, not later than fifteen (15) days after the date**
 6 **on the notice, an administrative hearing by an administrative law**
 7 **judge of the department.**

8 **(b) An administrative hearing under this section may be**
 9 **conducted in either of the following ways:**

10 **(1) As a written records or "paper" hearing conducted by**
 11 **review of written materials and other records.**

12 **(2) As a telephone or in person hearing conducted by review**
 13 **of written materials and testimony.**

14 **(c) An individual who contests an income withholding is entitled**
 15 **to:**

16 **(1) an opportunity to inspect and copy records relating to the**
 17 **overpayment;**

18 **(2) an opportunity to enter into a written agreement with the**
 19 **department to establish a schedule for repayment of the**
 20 **overpayment; and**

21 **(3) an opportunity for an administrative hearing conducted by**
 22 **an administrative law judge of the department.**

23 **(d) An individual may contest an income withholding on the**
 24 **following grounds:**

25 **(1) That the existence, past due status, or the amount of the**
 26 **overpayment is incorrect.**

27 **(2) That the amount withheld was incorrectly calculated.**

28 **(3) That the overpayment is unenforceable as a matter of law.**

29 **(e) The department is not required to provide more than one (1)**
 30 **hearing based on the same grounds or objections. If:**

31 **(1) the department has already provided a hearing on the**
 32 **existence or the amount of the overpayment; and**

33 **(2) the employee does not have new evidence concerning the**
 34 **overpayment;**

35 **the department may not repeat the hearing on the existence or**
 36 **amount of the overpayment.**

37 **(f) The department's evidence concerning the existence, past due**
 38 **status, and amount of the overpayment is automatically admitted**
 39 **as evidence in the administrative hearing and must be considered**
 40 **by the administrative law judge."**

41 Page 16, after line 22, begin a new paragraph and insert:

42 "SECTION 10. IC 34-30-2-87.4 IS ADDED TO THE INDIANA

- 1 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2015]: **Sec. 87.4. IC 22-4-13.3-7 (Concerning**
- 3 **the withholding of overpaid unemployment benefits).**".
- 4 Renumber all SECTIONS consecutively.
(Reference is to SB 456 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 3.

Senator Boots, Chairperson